

103^D CONGRESS
2^D SESSION

S. 2532

To amend the Internal Revenue Code of 1986 to allow for the establishment of medical savings accounts for individuals covered by certain high deductible health plans.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, SEPTEMBER 12), 1994

Mr. ROTH (for himself, Mr. BOREN, Mr. SIMON, and Mr. COATS) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to allow for the establishment of medical savings accounts for individuals covered by certain high deductible health plans.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Medical Savings Account Tax Incentive Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference

1 shall be considered to be made to a section or other provi-
 2 sion of the Internal Revenue Code of 1986.

3 **SEC. 2. DEDUCTION FOR CONTRIBUTIONS TO MEDICAL**
 4 **SAVINGS ACCOUNTS.**

5 (a) IN GENERAL.—Part VII of subchapter B of chap-
 6 ter 1 (relating to additional itemized deductions for indi-
 7 viduals) is amended by redesignating section 220 as sec-
 8 tion 221 and by inserting after section 219 the following
 9 new section:

10 **“SEC. 220. CONTRIBUTIONS TO MEDICAL SAVINGS AC-**
 11 **COUNTS.**

12 “(a) DEDUCTION ALLOWED.—In the case of an eligi-
 13 ble individual, the amounts paid in cash during the taxable
 14 year by such individual to a medical savings account for
 15 the benefit of such individual or for the benefit of such
 16 individual and any spouse or dependent of such individual
 17 who is an eligible individual shall be treated for purposes
 18 of sections 162(l) and 213 as amounts paid for insurance
 19 which constitutes medical care.

20 “(b) LIMITATIONS.—

21 “(1) ONLY 1 ACCOUNT PER FAMILY.—Except as
 22 provided in regulations prescribed by the Secretary,
 23 no amount shall be treated as paid for insurance by
 24 reason of subsection (a) for amounts paid to any
 25 medical savings account if the account beneficiary,

1 or such beneficiary's spouse or dependent, is a bene-
 2 ficiary of any other medical savings account.

3 “(2) DOLLAR LIMITATION.—

4 “(A) IN GENERAL.—The aggregate
 5 amount which may be treated as paid for insur-
 6 ance under subsection (a) with respect to any
 7 account beneficiary shall not exceed the excess
 8 (if any) of—

9 “(i) the premium determined under
 10 subparagraph (B) for the same class of en-
 11 rollment as the high deductible health plan
 12 described in subsection (c)(1)(A), over

13 “(ii) the cost of such high deductible
 14 health plan.

15 “(B) PREMIUM.—Not later than January
 16 1 of each calendar year, the Secretary shall de-
 17 termine and publish the premium (for each
 18 class of enrollment) for the preceding calendar
 19 year for the health benefits plan offered under
 20 chapter 89 of title 5, United States Code, with
 21 the highest enrollment (determined on the basis
 22 of the annual open enrollment period).

23 “(c) DEFINITIONS AND SPECIAL RULES.—For pur-
 24 poses of this section—

1 “(1) ELIGIBLE INDIVIDUAL.—The term ‘eligible
2 individual’ means any individual—

3 “(A) who is covered under a high deduct-
4 ible health plan during any portion of the cal-
5 endar year with or within which the taxable
6 year begins, and

7 “(B) who is not eligible during such cal-
8 endar year—

9 “(i) to participate in an employer-sub-
10 sidized health plan maintained by an em-
11 ployer of the individual, the individual’s
12 spouse, or any dependent of either, or

13 “(ii) to receive any employer contribu-
14 tion to a medical savings account.

15 For purposes of subparagraph (B), a self-employed
16 individual (within the meaning of section 401(c))
17 shall not be treated as his own employer.

18 “(2) HIGH DEDUCTIBLE HEALTH PLAN.—

19 “(A) IN GENERAL.—The term ‘high de-
20 ductible health plan’ means a health plan
21 which—

22 “(i) has an annual deductible limit for
23 each individual covered by the plan which
24 is not less than \$1,000 or more than
25 \$3,000, and

1 “(ii) has an annual limit on the aggre-
2 gate amount of deductibles required to be
3 paid with respect to all individuals covered
4 by the plan which is not less than \$2,000
5 or more than \$5,500.

6 “(B) COST-OF-LIVING ADJUSTMENT.—In
7 the case of taxable years beginning after De-
8 cember 31, 1996, each dollar amount contained
9 in subparagraph (A) shall be increased by an
10 amount equal to the product of—

11 “(i) such dollar amount, and

12 “(ii) the cost-of-living adjustment de-
13 termined under section 1(f)(3) for the cal-
14 endar year in which the taxable year be-
15 gins, except that such section shall be ap-
16 plied by substituting ‘the medical compo-
17 nent of the CPI’ for ‘the CPI’ each place
18 it appears and by substituting ‘1995’ for
19 ‘1992’ in subparagraph (B).

20 If any amount under this paragraph is not a
21 multiple of \$100, such amount shall be rounded
22 to the next lowest multiple of \$100.

23 “(3) MEDICAL SAVINGS ACCOUNT.—The term
24 ‘medical savings account’ has the meaning given
25 such term by section 7705.

1 “(4) TIME WHEN CONTRIBUTIONS DEEMED
2 MADE.—A contribution shall be deemed to be made
3 on the last day of the preceding taxable year if the
4 contribution is made on account of such taxable year
5 and is made not later than the time prescribed by
6 law for filing the return for such taxable year (not
7 including extensions thereof).”

8 (b) CLERICAL AMENDMENT.—The table of sections
9 for part VII of subchapter B of chapter 1 is amended by
10 striking the last item and inserting the following new item:

 “Sec. 220. Contributions to medical savings accounts.”

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall apply to taxable years beginning after
13 December 31, 1995.

14 **SEC. 3. EXCLUSION FROM INCOME OF EMPLOYER CON-**
15 **TRIBUTIONS TO MEDICAL SAVINGS AC-**
16 **COUNTS.**

17 (a) IN GENERAL.—Section 106 (relating to contribu-
18 tions by employers to accident and health plans) is amend-
19 ed by adding at the end the following new subsection:

20 “(b) CONTRIBUTIONS TO MEDICAL SAVINGS AC-
21 COUNTS.—

22 “(1) TREATMENT OF CONTRIBUTIONS.—

23 “(A) IN GENERAL.—Gross income of an
24 employee who is covered by a high deductible
25 health plan of an employer shall not include any

1 employer contribution to a medical savings ac-
2 count on behalf of the employee or the employ-
3 ee's spouse or dependents.

4 “(B) NO CONSTRUCTIVE RECEIPT.—No
5 amount shall be included in the gross income of
6 any employee solely because the employee may
7 choose between the contributions described in
8 subparagraph (A) and employer contributions
9 to a health plan of the employer.

10 “(2) DOLLAR LIMITATION.—The amount which
11 may be excluded under paragraph (1) for any tax-
12 able year shall not exceed the high deductible health
13 plan differential.

14 “(3) HIGH DEDUCTIBLE HEALTH PLAN DIF-
15 FERENTIAL.—For purposes of paragraph (2)(B), the
16 high deductible health plan differential with respect
17 to any employee is the amount by which the cost of
18 the high deductible health plan in which the em-
19 ployee is enrolled is less than the lesser of—

20 “(A) the cost (for the same class of enroll-
21 ment) of the health plan which—

22 “(i) the employee is eligible to enroll
23 in through the employer, and

1 “(ii) has the highest cost of all health
 2 plans in which the employee may enroll in
 3 through the employer, or

4 “(B) the amount determined under section
 5 220(b)(2)(B).

6 “(4) DEFINITIONS.—For purposes of this sub-
 7 section—

8 “(A) HIGH DEDUCTIBLE HEALTH PLAN.—
 9 The term ‘high deductible health plan’ has the
 10 meaning given such term by section 220(c)(2).

11 “(B) MEDICAL SAVINGS ACCOUNT.—The
 12 term ‘medical savings account’ has the meaning
 13 given such term by section 7705.”

14 (b) EMPLOYER PAYMENTS EXCLUDED FROM EM-
 15 PLOYMENT TAX BASE.—

16 (1) SOCIAL SECURITY TAXES.—

17 (A) Subsection (a) of section 3121 is
 18 amended by striking “or” at the end of para-
 19 graph (20), by striking the period at the end of
 20 paragraph (21) and inserting “; or”, and by in-
 21 serting after paragraph (21) the following new
 22 paragraph:

23 “(22) any payment made to or for the benefit
 24 of an employee if at the time of such payment it is
 25 reasonable to believe that the employee will be able

1 to exclude such payment from income under section
2 106(b).”

3 (B) Subsection (a) of section 209 of the
4 Social Security Act is amended by striking “or”
5 at the end of paragraph (18), by striking the
6 period at the end of paragraph (19) and insert-
7 ing “; or”, and by inserting after paragraph
8 (19) the following new paragraph:

9 “(20) any payment made to or for the benefit
10 of an employee if at the time of such payment it is
11 reasonable to believe that the employee will be able
12 to exclude such payment from income under section
13 106(b) of the Internal Revenue Code of 1986.”

14 (2) RAILROAD RETIREMENT TAX.—Subsection
15 (e) of section 3231 is amended by adding at the end
16 the following new paragraph:

17 “(10) MEDICAL SAVINGS ACCOUNT CONTRIBU-
18 TIONS.—The term ‘compensation’ shall not include
19 any payment made to or for the benefit of an em-
20 ployee if at the time of such payment it is reason-
21 able to believe that the employee will be able to ex-
22 clude such payment from income under section
23 106(b).”

24 (3) UNEMPLOYMENT TAX.—Subsection (b) of
25 section 3306 is amended by striking “or” at the end

1 of paragraph (15), by striking the period at the end
2 of paragraph (16) and inserting “; or”, and by in-
3 serting after paragraph (16) the following new para-
4 graph:

5 “(17) any payment made to or for the benefit
6 of an employee if at the time of such payment it is
7 reasonable to believe that the employee will be able
8 to exclude such payment from income under section
9 106(b).”

10 (4) WITHHOLDING TAX.—Subsection (a) of sec-
11 tion 3401 is amended by striking “or” at the end of
12 paragraph (19), by striking the period at the end of
13 paragraph (20) and inserting “; or”, and by insert-
14 ing after paragraph (20) the following new para-
15 graph:

16 “(21) any payment made to or for the benefit
17 of an employee if at the time of such payment it is
18 reasonable to believe that the employee will be able
19 to exclude such payment from income under section
20 106(b).”

21 (c) CONFORMING AMENDMENT.—Section 106 is
22 amended by striking “Gross income” and inserting:

23 “(a) GENERAL RULE.—Gross income”.

1 (d) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to taxable years beginning after
 3 December 31, 1995.

4 **SEC. 4. MEDICAL SAVINGS ACCOUNTS.**

5 (a) IN GENERAL.—Chapter 79 is amended by adding
 6 at the end the following new section:

7 **“SEC. 7705. MEDICAL SAVINGS ACCOUNTS.**

8 “(a) GENERAL RULE.—The term ‘medical savings
 9 account’ means a trust created or organized in the United
 10 States for the exclusive benefit of the beneficiaries of the
 11 trust, but only if the written governing instrument creat-
 12 ing the trust meets the following requirements:

13 “(1) Except in the case of a rollover contribu-
 14 tion described in subsection (c)(4)—

15 “(A) no contribution will be accepted un-
 16 less—

17 “(i) it is in cash, and

18 “(ii) it is made for a period during
 19 which the individual on whose behalf it is
 20 made is covered under a high deductible
 21 health plan, and

22 “(B) contributions will not be accepted for
 23 any calendar year in excess of the amount de-
 24 termined under section 220(b)(2)(B).

1 “(2) The trustee is a bank (as defined in sec-
2 tion 408(n)), insurance company (as defined in sec-
3 tion 816), or another person who demonstrates to
4 the satisfaction of the Secretary that the manner in
5 which such person will administer the trust will be
6 consistent with the requirements of this section.

7 “(3) The assets of the trust will not be commin-
8 gled with other property except in a common trust
9 fund or common investment fund.

10 “(4) No part of the trust assets will be invested
11 in life insurance contracts.

12 “(5) The interest of an individual in the bal-
13 ance in the individual’s account is nonforfeitable.

14 “(b) TAX TREATMENT OF ACCOUNTS.—

15 “(1) ACCOUNT TAXED AS GRANTOR TRUST.—

16 “(A) IN GENERAL.—Except as provided in
17 subparagraph (B), the account beneficiary of a
18 medical savings account shall be treated for
19 purposes of this title as the owner of such ac-
20 count and shall be subject to tax thereon in ac-
21 cordance with subpart E of part I of subchapter
22 J of this chapter (relating to grantors and oth-
23 ers treated as substantial owners).

24 “(B) TREATMENT OF CAPITAL LOSSES.—

25 With respect to assets held in a medical savings

1 account, any capital loss for a taxable year
2 from the sale or exchange of such an asset shall
3 be allowed only to the extent of capital gains
4 from such assets for such taxable year. Any
5 capital loss which is disallowed under the pre-
6 ceding sentence shall be treated as a capital
7 loss from the sale or exchange of such an asset
8 in the next taxable year.

9 “(2) ACCOUNT TERMINATIONS.—

10 “(A) PROHIBITED TRANSACTIONS; EXCESS
11 WITHDRAWALS.—If, during any taxable year of
12 the account beneficiary—

13 “(i) such beneficiary engages in any
14 transaction prohibited by section 4975
15 with respect to the account, or

16 “(ii) there is a distribution out of the
17 account any portion of which is includible
18 in the income of the account beneficiary
19 under subsection (c)(1)(A), and after such
20 distribution the balance in the account is
21 less than the annual aggregate deductible
22 limit for all individuals covered by the high
23 deductible health plan,

24 the account shall cease to be a medical savings
25 account as of the first day of such taxable year.

1 “(B) FAILURE TO REMAIN IN HEALTH
2 PLAN.—

3 “(i) IN GENERAL.—If, at any time
4 during the 2-taxable year period beginning
5 with the taxable year of the account bene-
6 ficiary in which the medical savings ac-
7 count was established, the account bene-
8 ficiary becomes a participant in a health
9 plan which has a lower individual (or ag-
10 gregate) deductible limit than the lowest
11 individual (or aggregate) limit permitted
12 under a high deductible health plan, the
13 account shall cease to be a medical savings
14 account as of the first day of the taxable
15 year in which the individual ceases to be so
16 covered.

17 “(ii) EXCEPTION.—This subpara-
18 graph shall not apply to any account bene-
19 ficiary who becomes a participant in a plan
20 described in such subparagraph by reason
21 of separation from employment.

22 “(C) ACCOUNT TREATED AS DISTRIBUTING
23 ALL ITS ASSETS.—In any case in which any ac-
24 count ceases to be a medical savings account by
25 reason of subparagraph (A) or (B) on the first

1 day of any taxable year, subsection (c) shall be
2 applied as if—

3 “(i) there were a distribution on such
4 first day in an amount equal to the fair
5 market value (on such first day) of all as-
6 sets in the account (on such first day), and

7 “(ii) no portion of such distribution
8 were used to pay qualified medical ex-
9 penses.

10 “(D) CORRECTION WITHIN 60 DAYS.—Sub-
11 paragraph (A)(ii) shall not apply to any dis-
12 tribution if, within 60 days of the 1st date the
13 account beneficiary knew (or exercising reason-
14 able diligence would have known) of a failure to
15 meet the requirements of subparagraph (A)(ii),
16 the account beneficiary repays to the account
17 the amount of the excess distribution. Such re-
18 payment shall not be treated as a contribution
19 to the account.

20 “(3) EFFECT OF PLEDGING ACCOUNT AS SECU-
21 RITY.—If, during any taxable year, the account ben-
22 eficiary uses the account or any portion thereof as
23 security for a loan, the portion so used is treated as
24 distributed and not used to pay qualified medical ex-
25 penses.

1 “(c) TAX TREATMENT OF DISTRIBUTIONS.—

2 “(1) INCLUSION OF AMOUNTS NOT USED FOR
3 QUALIFIED MEDICAL EXPENSES.—

4 “(A) IN GENERAL.—Any amount paid or
5 distributed out of a medical savings account
6 which is not used exclusively to pay the quali-
7 fied medical expenses of the account beneficiary
8 or of the spouse or dependents of such bene-
9 ficiary shall be included in the gross income of
10 such beneficiary to the extent such amount does
11 not exceed the excess of—

12 “(i) the aggregate contributions to
13 such account which were not includible in
14 gross income by reason of section 106(b)
15 or which were deductible under section
16 220, over

17 “(ii) the aggregate prior payments or
18 distributions from such account which were
19 includible in gross income under this para-
20 graph.

21 “(B) SPECIAL RULES.—For purposes of
22 subparagraph (A)—

23 “(i) all payments and distributions
24 during any taxable year shall be treated as
25 1 distribution, and

1 “(ii) any distribution of property shall
2 be taken into account at its fair market
3 value on the date of the distribution.

4 “(2) EXCESS CONTRIBUTIONS RETURNED BE-
5 FORE DUE DATE OF RETURN.—Paragraph (1) shall
6 not apply to the distribution of any contribution paid
7 during a taxable year to a medical savings account
8 to the extent that such contribution exceeds the
9 amount under subsection (a)(2) if—

10 “(A) such distribution is received by the
11 individual on or before the last day prescribed
12 by law (including extensions of time) for filing
13 such individual’s return for such taxable year,
14 and

15 “(B) such distribution is accompanied by
16 the amount of net income attributable to such
17 excess contribution.

18 Any net income described in subparagraph (B) shall
19 be included in the gross income of the individual for
20 the taxable year in which it is received.

21 “(3) PENALTY FOR DISTRIBUTIONS NOT USED
22 FOR QUALIFIED MEDICAL EXPENSES.—

23 “(A) IN GENERAL.—The tax imposed by
24 chapter 1 on the account beneficiary for any
25 taxable year in which there is a payment or dis-

1 tribution from a medical savings account of
2 such beneficiary which is includible in gross in-
3 come under paragraph (1) shall be increased by
4 10 percent of the amount which is so includible.

5 “(B) EXCEPTION FOR DISABILITY OR
6 DEATH.—Subparagraph (A) shall not apply if
7 the payment or distribution is made after the
8 account beneficiary becomes disabled within the
9 meaning of section 72(m)(7) or dies.

10 “(C) EXCEPTION FOR DISTRIBUTIONS
11 AFTER AGE 59½.—Subparagraph (A) shall not
12 apply to any payment or distribution after the
13 date on which the account beneficiary attains
14 age 59½.

15 “(4) ROLLOVER CONTRIBUTION.—An amount is
16 described in this paragraph as a rollover contribu-
17 tion if it meets the requirements of subparagraphs
18 (A) and (B).

19 “(A) IN GENERAL.—Paragraph (1) shall
20 not apply to any amount paid or distributed
21 from a medical savings account to the account
22 beneficiary to the extent the amount received is
23 paid into a medical savings account for the ben-
24 efit of such beneficiary not later than the 60th

1 day after the day on which the beneficiary re-
2 ceives the payment or distribution.

3 “(B) LIMITATION.—This paragraph shall
4 not apply to any amount described in subpara-
5 graph (A) received by an individual from a
6 medical savings account if, at any time during
7 the 1-year period ending on the day of such re-
8 ceipt, such individual received any other amount
9 described in subparagraph (A) from a medical
10 savings account which was not includible in the
11 individual’s gross income because of the appli-
12 cation of this paragraph.

13 “(5) COORDINATION WITH MEDICAL EXPENSE
14 DEDUCTION.—For purposes of section 213, any pay-
15 ment or distribution out of a medical savings ac-
16 count for qualified medical expenses shall not be
17 treated as an expense paid for medical care to the
18 extent of the amount of such payment or distribu-
19 tion which is excludable from gross income solely by
20 reason of paragraph (1)(A).

21 “(6) TRANSFER OF ACCOUNT INCIDENT TO DI-
22 VORCE.—The transfer of an individual’s interest in
23 a medical savings account to an individual’s spouse
24 or former spouse under a divorce or separation in-
25 strument described in subparagraph (A) of section

71(b)(2) shall not be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer shall be treated as a medical savings account of such spouse, and not of such individual. Any such account or annuity shall, for purposes of this subtitle, be treated as maintained for the benefit of the spouse to whom the interest was transferred.

“(d) DEFINITIONS.—For purposes of this section—

“(1) QUALIFIED MEDICAL EXPENSES.—

“(A) IN GENERAL.—The term ‘qualified medical expenses’ means any expense for—

“(i) medical care (as defined in section 213(d)), or

“(ii) qualified long-term care services.

“(B) EXCEPTION FOR INSURANCE.—

“(i) IN GENERAL.—Such term shall not include any expense for insurance.

“(ii) EXCEPTIONS.—Clause (i) shall not apply to any expense for—

“(I) coverage under a health plan during a period of continuation coverage described in section 4980B(f)(2)(B),

1 “(II) coverage under a medicare
2 supplemental policy (as defined in sec-
3 tion 1882(g)(1) of the Social Security
4 Act), or

5 “(III) payment of premiums
6 under part A or B of title XVIII of
7 the Social Security Act, or

8 “(IV) coverage under a policy
9 providing qualified long-term care
10 services.

11 “(C) QUALIFIED LONG-TERM CARE SERV-
12 ICES.—For purposes of this paragraph—

13 “(i) IN GENERAL.—The term ‘quali-
14 fied long-term care services’ means nec-
15 essary diagnostic, preventive, therapeutic,
16 rehabilitative, and maintenance (including
17 personal care) services—

18 “(I) which are required by an in-
19 dividual during any period during
20 which such individual is a functionally
21 impaired individual,

22 “(II) which have as their primary
23 purpose the provision of needed assist-
24 ance with 1 or more activities of daily
25 living which a functionally impaired

1 individual is certified as being unable
2 to perform under clause (ii)(I), and

3 “(III) which are provided pursu-
4 ant to a continuing plan of care pre-
5 scribed by a licensed health care prac-
6 titioner (other than a relative of such
7 individual).

8 “(ii) FUNCTIONALLY IMPAIRED INDIV-
9 VIDUAL.—

10 “(I) IN GENERAL.—The term
11 ‘functionally impaired individual’
12 means any individual who is certified
13 by a licensed health care practitioner
14 (other than a relative of such individ-
15 ual) as being unable to perform, with-
16 out substantial assistance from an-
17 other individual (including assistance
18 involving verbal reminding, physical
19 cueing, or substantial supervision), at
20 least 3 activities of daily living de-
21 scribed in clause (iii).

22 “(II) SPECIAL RULE FOR HOME
23 HEALTH CARE SERVICES.—In the case
24 of services which are provided during
25 any period during which an individual

1 is residing within the individual's
 2 home (whether or not the services are
 3 provided within the home), subclause
 4 (I) shall be applied by substituting '2'
 5 for '3'. For purposes of this
 6 subclause, a nursing home or similar
 7 facility shall not be treated as a home.

8 “(iii) ACTIVITIES OF DAILY LIVING.—
 9 Each of the following is an activity of daily
 10 living:

11 “(I) Eating.

12 “(II) Transferring.

13 “(III) Toileting.

14 “(IV) Dressing.

15 “(V) Bathing.

16 “(D) LICENSED HEALTH CARE PRACTI-
 17 TIONER.—For purposes of subparagraph (C)—

18 “(i) IN GENERAL.—The term ‘licensed
 19 health care practitioner’ means—

20 “(I) a physician or registered
 21 professional nurse,

22 “(II) a qualified community care
 23 case manager (as defined in clause
 24 (ii)), or

1 “(III) any other individual who
2 meets such requirements as may be
3 prescribed by the Secretary after con-
4 sultation with the Secretary of Health
5 and Human Services.

6 “(ii) QUALIFIED COMMUNITY CARE
7 CASE MANAGER.—The term ‘qualified com-
8 munity care case manager’ means an indi-
9 vidual or entity which—

10 “(I) has experience or has been
11 trained in providing case management
12 services and in preparing individual
13 care plans;

14 “(II) has experience in assessing
15 individuals to determine their func-
16 tional and cognitive impairment;

17 “(III) is not a relative of the in-
18 dividual receiving case management
19 services; and

20 “(IV) meets such requirements
21 as may be prescribed by the Secretary
22 after consultation with the Secretary
23 of Health and Human Services.

24 “(E) RELATIVE.—For purposes of this
25 paragraph, the term ‘relative’ means an individ-

1 ual bearing a relationship to another individual
2 which is described in paragraphs (1) through
3 (8) of section 152(a).

4 “(2) ACCOUNT BENEFICIARY.—The term ‘ac-
5 count beneficiary’ means the individual for whose
6 benefit the medical savings account is maintained.

7 “(e) CUSTODIAL ACCOUNTS.—For purposes of this
8 section, a custodial account shall be treated as a trust if—

9 “(1) the assets of such account are held by a
10 bank (as defined in section 408(n)), insurance com-
11 pany (as defined in section 816), or another person
12 who demonstrates to the satisfaction of the Sec-
13 retary that the manner in which such person will ad-
14 minister the account will be consistent with the re-
15 quirements of this section, and

16 “(2) the custodial account would, except for the
17 fact that it is not a trust, constitute a medical sav-
18 ings account described in subsection (a).

19 For purposes of this title, in the case of a custodial ac-
20 count treated as a trust by reason of the preceding sen-
21 tence, the custodian of such account shall be treated as
22 the trustee thereof.

23 “(f) REPORTS.—The trustee of a medical savings ac-
24 count shall make such reports regarding such account to
25 the Secretary and to the individual for whose benefit the

1 account is maintained with respect to contributions, dis-
 2 tributions, and such other matters as the Secretary may
 3 require under regulations. The reports required by this
 4 subsection shall be filed at such time and in such manner
 5 and furnished to such individuals at such time and in such
 6 manner as may be required by those regulations.”

7 (b) TAX ON EXCESS CONTRIBUTIONS.—Section 4973
 8 (relating to tax on excess contributions to individual re-
 9 tirement accounts, certain section 403(b) contracts, and
 10 certain individual retirement annuities) is amended—

11 (1) by inserting “**MEDICAL SAVINGS AC-**
 12 **COUNTS,**” after “**ACCOUNTS,**” in the heading of
 13 such section,

14 (2) by striking “or” at the end of paragraph
 15 (1) of subsection (a),

16 (3) by redesignating paragraph (2) of sub-
 17 section (a) as paragraph (3) and by inserting after
 18 paragraph (1) the following:

19 “(2) a medical savings account (within the
 20 meaning of section 7705(a)), or”, and

21 (4) by adding at the end the following new sub-
 22 section:

23 “(d) EXCESS CONTRIBUTIONS TO MEDICAL SAVINGS
 24 ACCOUNTS.—For purposes of this section, in the case of
 25 a medical savings account (within the meaning of section

1 7705(a)), the term ‘excess contributions’ means the
 2 amount by which the amount contributed for the taxable
 3 year to the account exceeds the amount which may be con-
 4 tributed to the account under section 7705(a)(1)(B) for
 5 such taxable year. For purposes of this subsection, any
 6 contribution which is distributed out of the medical sav-
 7 ings account in a distribution to which section 7705(c)(2)
 8 applies shall be treated as an amount not contributed.”

9 (c) TAX ON PROHIBITED TRANSACTIONS.—Section
 10 4975 (relating to prohibited transactions) is amended—

11 (1) by adding at the end of subsection (c) the
 12 following new paragraph:

13 “(4) SPECIAL RULE FOR MEDICAL SAVINGS AC-
 14 COUNTS.—An individual for whose benefit a medical
 15 savings account (within the meaning of section
 16 7705(a)) is established shall be exempt from the tax
 17 imposed by this section with respect to any trans-
 18 action concerning such account (which would other-
 19 wise be taxable under this section) if, with respect
 20 to such transaction, the account ceases to be a medi-
 21 cal savings account by reason of the application of
 22 section 7705(b)(2)(A)(i) to such account.”, and

23 (2) by inserting “or a medical savings account
 24 described in section 7705(a)” in subsection (e)(1)
 25 after “described in section 408(a)”.

1 (d) FAILURE TO PROVIDE REPORTS ON MEDICAL
 2 SAVINGS ACCOUNTS.—Section 6693 (relating to failure to
 3 provide reports on individual retirement accounts or annu-
 4 ities) is amended—

5 (1) by inserting “**OR ON MEDICAL SAVINGS**
 6 **ACCOUNTS**” after “**ANNUITIES**” in the heading of
 7 such section, and

8 (2) by adding at the end of subsection (a) the
 9 following: “The person required by section 7705(f)
 10 to file a report regarding a medical savings account
 11 at the time and in the manner required by such sec-
 12 tion shall pay a penalty of \$50 for each failure un-
 13 less it is shown that such failure is due to reasonable
 14 cause.”

15 (e) CLERICAL AMENDMENTS.—

16 (1) The table of sections for chapter 43 is
 17 amended by striking the item relating to section
 18 4973 and inserting the following:

“Sec. 4973. Tax on excess contributions to individual retirement
 accounts, medical savings accounts, certain 403(b)
 contracts, and certain individual retirement annu-
 ities.”

19 (2) The table of sections for subchapter B of
 20 chapter 68 is amended by inserting “or on medical
 21 savings accounts” after “annuities” in the item re-
 22 lating to section 6693.

1 (f) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on January 1, 1996.

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